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October 24, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW.
Washington, D.C. 20554

Re: In the Matter of Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, CC Docket No. 96-187

Dear Mr. Caton:

Pursuant to Paragraph 49 of the Notice of Proposed Rulemaking in the above captioned matter, enclosed please find an original and sixteen copies of the Reply Comments of the Ad Hoc Telecommunications Users Committee. Please date stamp the additional copy and return it with our messenger.

If you have any questions regarding this filing, do not hesitate to call.

Sincerely,

Alexandra M. Field

Alexandra M. Field

client/200/03/leccvr.doc

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996	)	CC Docket No. 96-187

REPLY COMMENTS OF THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE

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October 24, 1996

SUMMARY

In this proceeding, the Commission has proposed measures to implement the streamlining requirements of Section 204(a)(3).

The NPRM tentatively concluded that where Congress used the term "deemed lawful," it intended to change the current regulatory treatment of Local Exchange Carrier (LEC) tariff filings. The record does not support this tentative conclusion. Through use of the expression "deemed lawful," it is likely that Congress merely intended to make clear that LEC streamlined tariff revisions are "legal" rates after they become effective.

The LECs support the Commission's first interpretation of "deemed lawful," (i.e. that "deemed lawful" changes the legal status of tariff filings that become effective without suspension and investigation so that they are a final agency act for purposes of judicial review) does not overcome the fact that this interpretation would subject LEC customers to unlawful rates, without effective redress in violation of other provisions of the Communications Act. The LECs ineffectively argue against the Commission's second interpretation of "deemed lawful." The second interpretation better balances carrier and customer interests because it only establishes a presumption of lawfulness.

The LECs' comments fail to establish a good basis for streamlined treatment of new services. "New" service tariffs require more careful review than is possible under short public notice periods.

Beyond a basic agreement that the Commission should create a system whereby tariff filings and related documents may be submitted electronically,

there was no consensus on the details of implementing such a system. The Commission should create a system that is accessible to everyone and should develop rules regarding comment periods that allow for system errors.

Elimination of pre-effective review of LEC tariff revisions would contravene Section 204(a)(3) of the Act. Enhanced summaries and legal analyses would facilitate pre-effective review of LEC tariff revisions filed on short notice.

Southwestern Bell's notice period proposals should be rejected because they are inconsistent with Section 204(a) and Section 208 of the Act. Moreover, AT&T and MCI point out that a three day window for filing petitions against LEC tariff filings would allow LECs to file on Friday with petitions against the filing due on Monday, effectively creating a one day filing period. The access service market is effectively monopolistic. Consumer interests cannot be protected without a reasonable opportunity to petition against LEC tariff revisions. Moreover, tariff submissions that include both rate increases and decreases should be effective fifteen days after filing so that the Commission and the public have the full time that Congress mandated to investigate the rate increases before they become effective.

Finally, even USTA opposes a blanket grant of protective orders for LEC tariff revisions. LECs should retain the burden of proving the need for and appropriateness of such orders.

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996	)	CC Docket No. 96-187
	)	
	)	

REPLY COMMENTS OF THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE

The Ad Hoc Telecommunications Users Committee (the "Ad Hoc Committee") hereby submits its comments in response to the comments filed in the above-captioned proceeding. The Commission's Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding seeks comment on implementation of Section 204(a)(3) of the Communications Act of 1934, as amended.[1]

I. THE MEANING OF "DEEMED LAWFUL" (NPRM Section III)

A. Congress Did Not Intend to Change the Regulatory Process

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[1] *In the Matter of Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, CC Docket No. 96-187 (released Sept. 6, 1996) [hereinafter "NPRM"]. Section 204(a)(3) as revised reads "A local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Any such charge, classification, regulation, or practice shall be deemed lawful and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action under paragraph (1) before the end of that 7-day or 15-day period as appropriate."

The NPRM tentatively concluded that where Congress used the term "deemed lawful," in what is now Section 204(a)(3) it intended to change the current regulatory treatment of Local Exchange Carrier (LEC) tariff filings. The Ad Hoc Committee's comments explain that on this point the NPRM overlooked a different, and more plausible, interpretation of "deemed lawful."[2] Through use of the expression "deemed lawful," Congress merely intended to make clear that like all tariffed rate revisions that become lawful, LEC rate decreases and increases filed pursuant to statutory notice periods are "legal" rates after they become effective. The LECs did not address this possibility in their comments.

B. Congress Did Not Intend to Remove Customer Rights and Protections

The NPRM identified two possible interpretations of the term "deemed lawful." The first interpretation would change the legal status of streamlined filings that become effective without suspension and investigation.[3] Under this interpretation of "deemed lawful," the carrier would be immunized from liability unless and until the Commission determined the tariff was unlawful and opened up penalties on a going forward basis.[4]

In its Comments, the Ad Hoc Committee explained that Congress could not have intended this interpretation. The Telecommunications Act of 1996 seeks to promote competition, but also recognizes that LECs still hold market

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2 Ad Hoc Committee Comments at 2.

3 NPRM at ¶8-11.

4 *Id.*

power. Congress could not have intended to subject LEC customers to monopoly carrier abuse with no realistic opportunity for redress.

Not surprisingly, the incumbent LECs (with the exception of Ameritech) strongly support the first interpretation of "deemed lawful." Their arguments, however, merely serve to highlight the weak points in the interpretation. When USTA [5] and Pacific Telesis[6] argue that the first interpretation should be adopted because it makes the status of LEC rate revisions more certain, they ignore the fact that the Communications Act still requires that carrier rates be just and reasonable and that consumers be protected from unjust and unreasonable rates. Furthermore, when Pacific Telesis and Nynex look to the future to argue that customers will have competitive options, they ignore the fact that today's marketplace does not yet protect consumers from unjust rates.[7]

Nynex and US WEST argue that customers would still have sufficient remedies under the first interpretation of "deemed lawful." Nynex points out that the Commission can investigate LEC rate revisions and suspend the effectiveness of such revisions for up to five months.[8] Nynex's argument is a red herring. If a LEC rate revision becomes effective and is later found unlawful, customers would have been subjected to unlawful rates without being able to

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5 USTA Comments at 3.

6 Pacific Telesis Comments at 2.

7 Pacific Telesis Comments at 5; Nynex Comments at 11.

8 Nynex Comments at 11.

recover damages caused by the unlawful rates. The possibility of suspension and investigation would not alter that fact.

US WEST contends that customers still have the option of filing complaints under Section 208 of the Communications Act and Section 205 of the Communications Act and that carriers may still be held liable under any other laws or statutes that might apply.[9] Like Nynex's suspension and investigation argument, US WEST's reference to the complaint process does not change the fact that under the NPRM's first interpretation of "deemed lawful," reparative damages are not an option.

There is no evidence in either the legislative history or statutory construction of the Telecommunications Act of 1996 that Congress intended to eliminate LEC payment of damages suffered as a result of legally effective, but unlawful, rates.[10] There is nothing in the conference report that would support such an interpretation, nor did Congress make any changes to section 209 of the Communications Act which gives the Commission very broad authority to award damages.

Finally, most of the LECs look to the definitions found in Black's Law Dictionary for the term "deem" as proof that the plain meaning supports the NPRM's first interpretation of "deemed lawful."[11] In actuality, the definitions

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[9] US WEST Comments at 5.

[10] 47 U.S.C. §209.

[11] Nynex Comments at 10; Pacific Telesis Comments at 4; USTA Comments at 3; Southwestern Bell Comments at 4.

given in Black's ("to hold; consider; adjudge; believe; condemn; determine; treat as if; construe")[12] are more ambiguous than the LECs present. For example, a tariff may be "treated as" lawful or "considered" lawful without actually being lawful. With this ambiguity, Black's does not provide an answer as to the intended meaning of the term "deem."

It should come as no surprise that the LECs are interested in taking advantage of the opportunity presented by the Commission's first interpretation. However, there is no evidence that Congress intended to withdraw existing rights and protections from users. Ad Hoc's proposed interpretation of "deemed lawful" is by far more reasonable than the NPRM's first interpretation. It provides a much more realistic balance of carrier and customer interests.

C. The NPRM's Second Interpretation Strikes a Better Balance than its First

The NPRM's second interpretation of "deemed lawful" would act to create a presumption that LEC rate revisions are lawful.[13] In its Comments, the Ad Hoc Committee argued that if the only alternatives to interpreting "deemed lawful" are the two represented in the NPRM, the second interpretation is the preferable option.[14] The second interpretation yields a more equitable balancing of carrier and customer interests than does the first interpretation. Moreover, the second interpretation is more in keeping with the complaint process set up in Section

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12 *Black's Law Dictionary* (5th Ed. 1981).

13 NPRM at ¶ 12.

14 Ad Hoc Committee Comments at 3.

208 of the Communications Act which provides the Commission with the authority to award damages.[15]

The LECs make remarkably weak arguments to support their rejection of the second interpretation of "deemed lawful." USTA argues that a presumption of lawfulness would be insufficient to alleviate concerns that the tariff process creates uncertainty in the marketplace.[16] In fact, the first interpretation of "deemed lawful," which USTA supports, serves to create a certainty in the marketplace that the LECs are insulated from liability for any tariffs that are not just or reasonable. In comparison, the presumption of lawfulness provides somewhat more certainty that even if consumers are harmed by unjust or unreasonable rates, there is still the opportunity to mitigate the loss through an award of damages.

Southwestern Bell and US WEST attempt arguments that are actually stronger when reversed. Southwestern Bell states that if Congress had "intended only to 'presume' the filings lawful, it would have said so and not used the word 'deemed.'"[17] More to the point, if Congress had intended to change something as fundamental as the remedies available to customers, Congress would have said so and not hidden the change in an inference in the suspension and investigation section.

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15 47 U.S.C. §209.

16 USTA Comments at 4.

17 Southwestern Bell Comments at 5.

US WEST argues that the second interpretation of "deemed lawful" would change carriers' regulatory status in a way Congress could not have intended. US WEST explains that:

> "Tariff suspensions are interlocutory decisions entrusted to the unreviewable discretion of the Commission. . .If a US WEST tariff is suspended, US WEST has no recourse to challenge the suspension. There is no indication that the 1996 Act intended to change that situation and give US WEST meaningful review rights when a tariff is suspended."[18] [footnotes omitted]

US WEST's underlying logic appears to be that if Congress intends to change "meaningful" rights, then Congress must do so clearly and directly. If the Commission were to use this logic, it would also have to find that Congress did not give any indication that it intended to *remove* existing rights of customers. In that case, the NPRM's first interpretation of "deemed lawful" which would remove the opportunity to award damages would also be an incorrect reading of Congress' intent.

The LECs' arguments in opposition to the NPRM's "presumption" interpretation are weak and unsubstantiated. Arguments made in favor of the NPRM's first interpretation are equally flawed. All of this highlights the fact that there is no clear Congressional intent as to the meaning of the term "deemed lawful." Therefore, without clear intent, the Commission must interpret the term in a manner most consistent with provisions of the Communications Act. Thus, the most appropriate interpretation of "deemed lawful" would be that LEC

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[18] US WEST Comments at 6.

streamlined tariff revisions are *treated as* lawful in that customers are obliged to abide by the tariffs unless and until the tariffs are found unlawful.

II. LEC TARIFFS ELIGIBLE FOR STREAMLINED FILING (NPRM Section IV)

In the NPRM, the Commission concluded that "all filings that involve changes to the rates, terms and conditions of existing service offerings are eligible for streamlined treatment."[19] In its comments, the Ad Hoc Committee argued that this conclusion is in keeping with both the language of new Section 204(a)(3) of the Communications Act and the stated intent of Congress. In its Joint Explanatory Statement, Congress stated that

> "[n]ew subsection (b) of Section 402 of the conference agreement addresses regulatory relief that streamlines the procedures for revision by local exchange carriers of charges, classifications and practices under section 204 of the Communications Act."[20] [emphasis added]

This language indicates an intent to limit eligibility for streamlined treatment to existing charges, classifications and practices. Tariff provisions offering "new services" require a more in-depth review than can be achieved under the proposed streamlining procedures.

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[19] NPRM at ¶ 17.

[20] *See* S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 69 (1996) [hereinafter "Joint Explanatory Statement"].

The LECs argue for an interpretation of the statute that would make new services eligible for streamlined treatment as well as existing services.[21] In support of this overly expansive interpretation, they make a number of policy arguments relating to the shape of the market and the role of new services. US WEST maintains that streamlining tariff filings for new services allows LECs to respond to other carriers as they bring out competing services.[22] Bell Atlantic argues that new services are discretionary from a customer's perspective and old services are generally kept active so that customers are truly the driving force of the market.[23] Southwestern Bell insists that the increased value of new services results, essentially, in price reductions for customers so it is imperative to get the services to the market as soon as possible.[24] USTA and Ameritech both maintain that it is in the public interest to allow tariffs for new services to be streamlined as delays are harmful to customers and competition.[25]

All of these arguments are rendered useless by the reality of the current marketplace. LECs still hold dominant market power. All the verbal gymnastics of the LEC complaints can not erase the basic fact that, while Congress has

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21 Nynex Comments at 12-14; Bell Atlantic Comments at 2-4; Pacific Telesis Comments at 10; Ameritech Comments at 10; USTA Comments at 5-6; US WEST Comments at 10-11; Southwestern Bell Comments at 6-7; Bell South Comments at 8.

22 US WEST Comments at 10-11.

23 Bell Atlantic Comments at 2-4.

24 Southwestern Bell Comments at 6-7.

25 Ameritech Comments at 10; USTA Comments at 5-6.

sought to create avenues to introduce and encourage competition in the future, the present belongs to the LECs. As a result, when interpreting the eligibility language in Section 204(a)(3), the Commission must keep in mind the monopoly status that LECs retain (even if that status is expected to change in the future) and construe the language narrowly enough to allow needed review for tariff submissions for new services.

III. STREAMLINED FILING PROCEDURES (NPRM Section V)

A. Electronic Filing

The NPRM proposed that carriers be required to file tariffs and associated documentation electronically via dial up access or via the Internet.[26] The NPRM questioned whether the Commission should be responsible for managing and administering the system for tariff filings or whether each carrier should be responsible for any filings related to its own tariff filings. The NPRM also contemplated permitting parties to file petitions and responsive pleadings electronically.[27]

In its comments, the Ad Hoc Committee supported electronic filing requirements, particularly in situations such as streamlined tariff filings, where time periods are short. In situations where users have such limited opportunities to air their concerns to the Commission, obtaining the LEC tariff revisions a few

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26 NPRM at ¶21.

27 NPRM at ¶22.

days sooner than would otherwise be possible due to electronic filing by the LEC can make a considerable difference. The Ad Hoc Committee also agreed with the Commission's conclusion that carriers should be primarily responsible for administering their tariff filings. By distributing the responsibility for administration of filings to the carriers, the Commission would reduce the likelihood of delays due to the bottlenecks that could arise if the Commission, with its limited resources, has the responsibility of putting carrier tariff revisions "on-line."

In addition, the Ad Hoc Committee recommended that the Commission require that all filings be available for access on-line by 10 am on the day that they are filed. This would allow interested parties to access the documents during working hours on the day that the filing is made.

The concept of electronic filing received overwhelming support from other parties submitting comments. However, there was no consensus as to the details relating to the implementation of an electronic filing system. In making its final decisions regarding these details, the Commission's primary concern should be creating a system that is equally accessible to anyone. One aspect of supporting accessibility is ensuring that parties who wish to read or download tariff documents can do so through widely available computer hardware and software.

The Commission should also develop rules that would prevent members of the public from being penalized for problems with the system. For instance, the notice period should not start until the tariff is posted and accessible. Any

delay or down time due to technical troubles should not be counted against the comment period.

B. The Commission Should Not Rely Solely on Post-Effective Tariff Review

The NPRM solicited comments on whether the Commission can and should adopt a general policy of relying exclusively on post-effective tariff review.[28] The response from commentors to this suggestion was overwhelmingly negative.[29]

As a matter of statutory construction, limiting Commission review of LEC tariff revisions to post-effective review would contravene the Communications Act. Section 204(a)(3) of the Act states that a tariff transmittal shall be effective "unless the Commission takes action under paragraph (1) before the [effective date]." Congress could not have been more direct. It expects that pre-effective tariff review would be undertaken by specifically allowing action before the effective date. As a policy matter, the NPRM's suggestion that post-effective review would be sufficient was also wrong. Customers may suffer significant, perhaps irreparable, damages upon the effectiveness of tariff revisions. As an example, a user might, in light of a new tariff, change access and service configurations. Such changes cause network churn and raise risks of

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[28] NPRM at ¶23.

[29] *See, e.g.* Nynex Comments at 19; Bell Atlantic Comments at 4; Pacific Telesis Comments at 17; Ameritech Comments at 13; USTA Comments at 9; US WEST Comments at 8; Southwestern Bell Comments at 11-12; Bell South Comments at 11; AT&T Comments 11; MCI Comments at 16-18.

operational disruptions. Post-effectiveness review simply does not provide adequate remedies, particularly when customers of LEC bottleneck services cannot protect themselves through normal commercial precautions.

C. Pre-Effective Tariff Procedures (NPRM Section V)

1. Enhanced Summaries/Legal Analysis

The NPRM proposed to require that LECs provide enhanced summaries of the tariff transmittal and analyses of the legality of the tariff transmittals.[30] The NPRM also questioned whether it should establish presumptions of unlawfulness for narrow categories of tariffs.[31]

In its Comments, the Ad Hoc Committee argued that the benefit of the proposal outweighed any minimal additional burden on the carriers. On the one hand, the proposed enhanced summary and legal analysis would expedite review by both the Commission and other interested parties. On the other hand, the LECs should already have developed the information contained in the enhanced summaries.[32]

The LECs uniformly reject the idea of enhanced summaries or legal analyses.[33] They argue that it would be unfair or contrary to the de-regulatory

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30 NPRM at ¶25.

31 NPRM at ¶25.

32 Ad Hoc Committee Comments at 8.

33 Nynex Comments at 20-21; Bell Atlantic Comments at 7; Pacific Telesis Comments at 18-19; Ameritech Comments at 26; USTA Comments at 10; US WEST Comments at 15-16; Southwestern Bell Comments at 13-14; Bell South Comments at 12-14. To be precise, all of the LECs reject the idea of a legal analysis, and all but Ameritech and Bell Atlantic reject the idea of

spirit of the Telecommunications Act to add regulatory burdens. A number of the LECs also claim that existing information requirements provide sufficient information for the Commission's purposes.[34] The LECs also largely reject the idea of presumptions of unlawfulness, arguing that such a presumption would be in conflict with the "deemed lawful" language of the statute.

Congress clearly believed that the most important task in taking action to enhance the pro-competitive environment was to allow the LECs to increase their responsiveness to the market by decreasing relevant time delays. However Congress did not remove notice periods, thus acknowledging that pre-effective tariff review is still necessary. Thus, given that the additional information requested would expedite review by the Commission and interested parties,[35] and that, according to the LECs, they already prepare significant portions of the necessary information under current requirements, it would seem that the best interests of the Commission, consumers *and* the LECs are served by requiring enhanced summaries and legal analyses.

With regard to the presumption of unlawfulness, the only tariffs that can receive streamlined treatment are those that meet the relevant Commission requirements, such as the Price Cap Orders. If the tariff is not in compliance

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enhanced summaries. Bell Atlantic and Ameritech state that they are not opposed to submitting summaries as long as they are not more burdensome than current requirements.

34 Southwestern Bell Comments at 13-14; US WEST Comments at 15-16; Bell South Comments at 12-14; Bell Atlantic Comments at 7.

35 NPRM at ¶25.

with such rules, it can not be "deemed lawful" under any interpretation of that term. Thus, if a tariff submission falls within one of the narrow categories that the NPRM envisioned, it should be presumed unlawful.

2. Tariffs including both increases and decreases in rates should be filed on 15 days notice

The NPRM requested comment on the appropriate treatment of tariff transmittals that contain both rate increases and decreases. The NPRM tentatively concluded that in such situations the fifteen day notice period for rate increases should apply.[36]

In its Comments, the Ad Hoc Committee supports the Commission's conclusion that the 15-day notice period should apply in such situations. As a general proposition, rate increases imposed by dominant carriers will cause wider and more significant harm than rate decreases. Allowing carriers to combine both increases and decreases in a tariff filing that only had a 7-day notice period would undermine Congress' intent by opening an avenue for carriers to avoid giving customers 15-day public notice.

Pacific Telesis, Nynex and Southwestern Bell all suggest that the Commission should look to the Actual Price Index ("API") of the tariff submission to determine whether the tariff should be considered a rate increase or rate decrease.[37] This is not an approach supported by the statutory language.

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[36] NPRM at ¶26.

[37] Southwestern Bell Comments at 15; Nynex Comments at 21; Pacific Telesis Comments at 20-21.

Section 204(a)(3) specifically provides for an expanded time for rate increases. If the API approach is used, there may be significant rate increases that may balance out in the basket leaving the Commission and interested members of the public without the statutorily mandated time period to consider the changes. Moreover the LECs' recommendation does not take into account that customers rarely buy an entire tariff. Instead, they buy certain volumes of a limited number of services. The API recommendation could therefore harm consumers by subjecting them to significant rate increases which do not receive the necessary time for review.

3. Proposed comment period

The new seven and fifteen day notice periods imposed by Congress for rate increases and decreases raised concerns that existing pleading cycles would not give the Commission time to resolve and issues raised in the petitions before the effective date of the tariff. In response, the NPRM proposed to require that petitions against LEC tariff filings that are effective within seven or fifteen days of filing be filed within three days after the date the tariff is filed. Replies would be filed two days after service by hand of the petitions.[38]

The Ad Hoc Committee, in its comments, accepted a 3-day period for filing a petition on a 7-day public notice filing. For LEC rate increases filed on

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38 NPRM at ¶27-28.

15-day public notice, however, the Ad Hoc Committee advocated a period of 7 days after electronic on-line service.[39]

With the exception of Southwestern Bell, the LECs support the Commission's proposal of three days for petitions and two for replies.[40] Southwestern Bell argues that the FCC should not establish a public comment period and that the FCC should state that petitions against a streamlined LEC tariff filing will not routinely be accepted.[41] Moreover, if the FCC finds that a public comment period is necessary, Southwestern Bell maintains that the time period should be one business day with replies due two days after service.[42]

Southwestern Bell's proposal should be rejected. As the Commission notes in footnote 52 of the NPRM, section 204(a) of the Act explicitly provides for challenges to a filing by parties other than the Commission during the period *before* a tariff filing is suspended. Since tariffs cannot be suspended after they take effect, the opportunity to seek suspension of tariff filings can only be an opportunity to intervene before the tariff takes effect. The Commission cannot reasonably interpret section 204 to create an opportunity to challenge a filing *after* it takes effect. Section 208 of the Act explicitly provides for post-effective

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39 Ad Hoc Committee Comments at 9.

40 Nynex Comments at 20-21; Pacific Telesis Comments at 22-23; Ameritech Comments at 27; USTA Comments at 13; US WEST Comments at 19; Bell South Comments at 15.

41 Southwestern Bell Comments at 17-18.

42 Southwestern Bell Comments at 18.

complaints. An interpretation of Section 204(a) which permits challenges only after a tariff is in effect would render the Section superfluous and duplicative of Section 208.

Regarding time periods for petitions, AT&T and MCI make a strong point in their comments that a three day window of opportunity would allow the LECs to file on a Friday, thereby requiring petitioners to file on Monday.[43] One day filings are used in situations where the market is considered competitive enough to protect consumers. The LEC market is not yet that competitive.

4. Standard granting of protective orders is not in the public interest

The NPRM stated that the Commission would likely be unable to resolve controversies relating to confidential treatment of cost data within the newly established seven and fifteen day tariff review periods.[44] As a result of this concern, the NPRM solicited comments on whether the Commission should routinely impose standard protective orders whenever a carrier made a claim in good faith that the information in question qualified as confidential under Commission rules.[45] In its Comments, the Ad Hoc Committee argued that the openness of the Commission's processes is threatened when relevant data is held to be confidential.[46]

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43 AT&T Comments at 16; MCI Comments at 22.

44 NPRM at ¶29.

45 NPRM at ¶29.

46 Ad Hoc Committee Comments at 11.

Not all of the LECs raise this issue as one of great concern.[47] In fact, USTA suggests that confidentiality issues should be considered on a case-by-case basis.[48] This is the only way that the process can work. Cost support information is highly relevant to consumers and the presumption must be that they have the right to review all relevant information regarding tariff transmittals. Section 204(a)(3) is very clear that LECs *may* file on a streamlined basis. If a LEC believes that certain information is too sensitive to release and that the streamline time periods are too constricted to allow fair and reasonable consideration by the Commission as to whether the information should receive protection, then the LEC should choose not to file the tariff under streamlined procedures. The Commission has never made a practice of routinely granting confidential status to rate and cost information and should not endeavor to start now.

IV. REVIEW OF PART 69 RULES IS OUTSIDE THE SCOPE OF THIS PROCEEDING

A number of commentors bring up concerns with the Part 69 access charge rules.[49] Part 69 issues were not raised by the Commission in this

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47 Only four LECs include arguments that the Commission should routinely provide protective orders on the good faith assertions of the LEC. BellSouth Comments at 16; Ameritech Comments at 18-23; Nynex Comments at 23; Bell Atlantic Comments at 7-8.

48 USTA Comments at 13.

49 USTA Comments at 5-6; Nynex Comments at 6-7; Bell Atlantic Comments at 3.

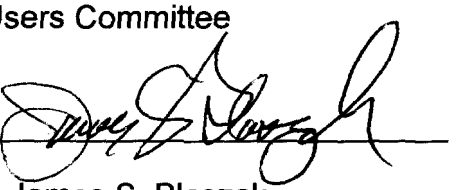
proceeding. Efforts to pursue these issues in this proceeding are therefore out of the scope of the proceeding and should not be considered.

CONCLUSION

For the above-stated reasons, the Ad Hoc Committee urges the Commission to adopt regulatory mechanisms that are consistent with the views expressed in these reply comments.

Respectfully submitted,

Ad Hoc Telecommunications
Users Committee

By 

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